IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16003 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANISH DAMJIBHAI SAVLA

Versus

MAMLATDAR,RAJKOT

Appearance:

1. Special Civil Application No. 16003 of 2004

MR SURESH M SHAH for Petitioner No. 1

MR MEHUL S SHAH for Petitioner No. 1

Mr. PR Abichandani, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/02/2005

ORAL JUDGEMENT

Rule. Shri PR Abichandani, learned AGP waives service of Rule on behalf of respondents. With the consent of learned advocates appearing for the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the notice issued by the Mamlatdar, Rajkot dated 15.10.2004 by which the petitioner is directed to vacate the land in question by holding that the petitioner has encroached upon the land in question. Shri Mehul S. Shah, learned advocate for the petitioner has submitted that in fact the land in question which is purchased by the petitioner and for which the Deputy Collector has already regularised the sale as per the order dated 1-5.6.1974 and that is the very land bearing Survey No. 35 of plot No.9 for which the issued is issued on the ground of encroachment. He has further submitted that in fact it is not a notice but it is a final order passed by the Mamlatdar directing the petitioner to hand over the possession. It is further submitted that as such the impugned notice/order dated 15.10.2004 is in breach of principles of natural justice as no opportunity has been given to the petitioner before passing the impugned notice/order.

2.1. Shri PR Abichandani, learned AGP appears on behalf of the respondents is not in position to support the notice/order dated 15.10.2004 to the effect that the same is passed without giving opportunity to the petitioner. He is also not in a position to point out whether before issuing the notice/order dated 15.10.2004 the petitioner was heard or not.

3. Under the circumstances, the impugned notice/order dated 15.10.2004 passed by the Mamlatdar is required to be quashed and set aside only on the ground that the same is in breach of principles of natural justice. Under the circumstances, the impugned notice/order dated 15.10.2004 is hereby quashed and set aside and it is directed that the notice impugned dated 15.10.2004 be treated as a show cause notice and the petitioner shall be entitled to file reply to the same, and after considering the reply submitted by the petitioner, the Mamlatdar, Rajkot is directed to pass an order in accordance with law and on merits. Shri Mehul S. Shah has submitted that the petitioner will be filing necessary reply within the period of two weeks from today and on receipt of the same, and after considering the submissions that may be made by the petitioner, the Mamlatdar, Rajkot is directed to pass an appropriate order in accordance with law and on merits. Until then, the parties are directed to maintain status quo.

4. The present Special Civil Application is allowed. Rule is made absolute accordingly. Direct service is

permitted.

[M.R. Shah, J.]

rmr.